SALAK LAND DEVELOPMENT SDN BHD v. PENTADBIR TANAH KUALA LANGAT & ORS

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
AZIAH ALI JCA
TENGKU MAIMUN TUAN MAT JCA
[CIVIL APPEAL NO: B-01-110-03-2012]
14 JANUARY 2015

ADMINISTRATIVE LAW: *Exercise of administrative powers – Judicial review – Certiorari and mandamus – Application for – State Authority's decision on award of compensation – Examination of – Whether there was illegality, procedural impropriety or irrationality – Whether appellant had right to resort to supervisory jurisdiction of court to examine decision – Whether there was error affecting merits – Whether State Authority took into consideration relevant factors – Electricity Supply Act 1990, ss. 11 & 16 – Rules of the High Court 1980, O. 53 r. 3(2)*

PUBLIC UTILITIES: *Electricity – Local authority – Compensation – Application for judicial review on State Authority's decision on award of compensation – Examination of – Whether there was illegality, procedural impropriety or irrationality – Whether appellant had right to resort to supervisory jurisdiction of court to examine decision – Whether there was error affecting merits – Whether State Authority took into consideration relevant factors – Electricity Supply Act 1990, ss. 11 & 16 – Rules of the High Court 1980, O. 53 r. 3(2)*

LAND LAW: *Right of way – Compensation – Electricity Supply Act 1990, ss. 11 & 16 – Application for judicial review on State Authority's decision on award of compensation – Examination of – Whether there was illegality, procedural impropriety or irrationality – Whether appellant had right to resort to supervisory jurisdiction of court to examine decision – Whether there was error affecting merits – Whether State Authority took into consideration relevant factors – Electricity Supply Act 1990, ss. 11 & 16 – Rules of the High Court 1980, O. 53 r. 3(2)*

Salak Land Development Sdn Bhd ('the appellant') had applied for the remedies, *inter alia*, of *certiorari*, *mandamus*, declarations and injunctions under O. 53 r. 3(2) of the Rules of the High Court 1980 for judicial review in respect of the decision of the Pihak Berkuasa Negeri Selangor ('the second respondent'), made on 14 July 2011, awarding the appellant compensation in the sum of RM2,931,937.50 and dismissing 'tuntutan pampasan bagi tanah sterile, tanah perasing dan zon penampan' under an appeal by the appellant pursuant to s. 16(2) of the Electricity Supply Act 1990 ('the 1990 Act') against the decision of Pentadbir Tanah Kuala Langat, ('the first respondent') under s. 16(1). Briefly, the facts were that Tenaga Nasional Bhd ('the third

A respondent') had issued a First Schedule Notice under s. 11(2) of the 1990 Act to the appellant, the registered owner of a land ('the land') to acquire right of way over a part of the land to construct a Loop In Loop Out Transmission Line. Pursuant to s. 11(4) of the 1990 Act, the appellant objected to the alignment proposed by TNB in the said First Schedule Notice B and made a proposal for the realignment of the same by offering an alternative route over the said land. The first respondent conducted an inquiry under s. 11(7) of the 1990 Act and made a Second Schedule Order wherein the appellant's objection to the third respondent's alignment and the appellant's realignment proposal was dismissed. The appellant appealed to C the second respondent. The second respondent allowed the appeal and the third respondent was to realign in accordance to the route proposed by the appellant. Pursuant to an inquiry, under s. 16(1) of the 1990 Act, the first respondent ordered the third respondent to pay compensation in the sum of RM1,465,968.707. The appellant appealed to the second respondent against the first respondent's award. The second respondent varied the award by D increasing it to RM2,931,937.40. The appellant applied for judicial review of the decision by the second respondent but the application was dismissed by the High Court. Hence, this appeal. The appellant submitted that the High Court had erred in dismissing the appellant's application for judicial review in that it had failed to appreciate that the second respondent had failed to take E into consideration relevant factors and misconstrued the applicable sections of the 1990 Act.

Held (dismissing appeal with costs)
Per Abdul Wahab Patail JCA delivering the judgment of the court:

F **(1)** Judicial review is about the exercise of a supervisory jurisdiction of the court which is distinct from its appellate jurisdiction. Appellate jurisdiction concerns appeals from the courts in whom is placed judicial authority. Appellate jurisdiction may also extend to the decisions of an authority, body or person if the legislation provides that an appeal therefrom lies to the court. But where a power or direction is assigned G to such authority, body or person, and there is no provision that an appeal therefrom lies to the court, it means that the legislature did not intend that an appeal may lie to the courts, and that the exercise of the power or discretion given to that authority, body or person is subject only to the supervisory jurisdiction of the court. (para 13)

H

(2) Although the decision of the State Authority was final, the appellant had the right to resort to the supervisory jurisdiction of the court to examine the decision of the State Authority as to whether there was illegality, procedural impropriety or irrationality. Regardless of any error in the I basis of the decision of the District Land Registrar, the compensation had been decided upon by the State Authority. Section 16 of the 1990

Act had, on the face of it, been complied with. It was not the appellant's case that there was illegality or procedural impropriety. That being so, the only foundation for judicial review that remained was irrationality. (para 22)

(3) In the appellate or the supervisory jurisdiction, it must first be demonstrated that there was an error affecting the merits, and in the supervisory jurisdiction it must be demonstrated that it was no mere error, but the error was so incapable of explanation that it can only be termed irrational. The appellant's submission herein was that in a land acquisition under the Land Acquisition Act 1960 in 1997, the compensation awarded was RM5.12 psf, whereas the award by the State Authority in 2010, the subject of the application for judicial review, was RM1.16 psf. However, the award in 1997 was in respect of a land acquisition, whereas the 2010 award was in respect of compensation determined under s. 16 in respect of a notice under s. 11(1). The appellant in this case did not lose the land as in an acquisition, but only as to the use of the land for agriculture. The comparison with the 1997 award was not apple to apple. The difference alone could not be the basis of any conclusion. In failing to demonstrate on an apple to apple basis, the appellant failed to demonstrate that the loss of use for agricultural purpose amounted to an amount so much higher than the RM1.16 psf such that that difference could not be explained. In the words of ss. 11 and 16, there was no reason to import into the 1990 Act the basis of determination of compensation in the Land Acquisition Act. (paras 23 & 24)

Bahasa Malaysia *Translation Of Headnotes*

Salak Land Development Sdn Bhd ('perayu') telah memohon remedi, antara lain, *certiorari*, *mandamus*, pengisytiharan dan injunksi di bawah A. 53 k. 3(2) Kaedah-Kaedah Mahkamah Tinggi 1980 untuk semakan kehakiman berkenaan keputusan Pihak Berkuasa Negeri Selangor ('responden kedua'), yang telah dibuat pada 14 Julai 2011, dalam mengawardkan perayu ganti rugi berjumlah RM2,931,937.50 dan menolak 'tuntutan pampasan bagi tanah sterile, tanah perasing dan zon penampan' di bawah rayuan oleh perayu menurut s. 16(2) Akta Bekalan Elektrik 1990 ('Akta 1990') terhadap keputusan Pentadbir Tanah Kuala Langat ('responden pertama') di bawah s. 16(1). Secara ringkas, fakta adalah bahawa Tenaga Nasional Bhd ('responden kertiga') telah mengeluarkan Notis Jadual Pertama di bawah s. 11(2) Akta 1990 kepada perayu, pemilik berdaftar sebidang tanah ('tanah') untuk memperoleh hak lalu lalang ke atas sebahagian tanah itu untuk membina sebuah Gelung Talian Penghantaran. Menurut s. 11(4) Akta 1990, perayu membantah penjajaran yang dicadangkan oleh TNB dalam Notis Jadual Pertama dan telah membuat cadangan bagi penyusunan semula dengan menawarkan laluan alternatif ke atas tanah tersebut. Responden

A pertama menjalankan siasatan di bawah s. 11(7) Akta 1990 dan telah membuat Perintah Notis Kedua di mana bantahan perayu terhadap penjajaran responden ketiga dan penjajaran baru yang dicadangkan oleh perayu ditolak. Perayu merayu kepada responden kedua. Responden kedua membenarkan rayuan dan responden ketiga diarahkan menyelaraskan semula B menurut laluan yang dicadangkan oleh perayu. Selaras dengan suatu siasatan, di bawah s.16(1) Akta 1990, responden pertama memerintahkan responden ketiga membayar ganti rugi dalam jumlah RM1,465,968.707. Perayu merayu kepada responden kedua terhadap award responden pertama. Responden kedua mengubah award itu dengan membuat penambahan kepada jumlah C RM2,931,937.40. Perayu memohon semakan kehakiman keputusan oleh responden kedua tetapi permohonan itu telah ditolak oleh Mahkamah Tinggi. Oleh itu, rayuan ini. Perayu menghujahkan bahawa Mahkamah Tinggi telah terkhilaf apabila menolak permohonan perayu untuk semakan kehakiman kerana gagal mengambil kira bahawa responden kedua gagal mempertimbangkan faktor-faktor relevan dan telah menyalahtafsirkan D seksyen-seksyen yang diguna pakai dalam Akta 1990.

Diputuskan (menolak rayuan dengan kos)

Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

E **(1)** Semakan kehakiman adalah pelaksanaan bidang kuasa penyeliaan mahkamah yang berbeza daripada bidang kuasa rayuannya. Bidang kuasa rayuan melibatkan rayuan-rayuan dari mahkamah di mana terletaknya kuasa kehakiman. Bidang kuasa rayuan juga boleh diperluaskan kepada keputusan-keputusan pihak berkuasa, perbadanan F atau orang jika perundangan menyediakan rayuan dari masa itu terletak pada mahkamah. Tetapi di mana kuasa atau arahan yang diberikan kepada pihak berkuasa, perbadanan atau orang, dan tiada peruntukan bahawa satu rayuan dari masa itu terletak pada mahkamah, bermaksud bahawa badan perundangan tidak berniat untuk rayuan itu terletak pada G mahkamah, dan bahawa pelaksanaan kuasa atau budi bicara yang diberikan kepada pihak berkuasa, perbadanan atau orang itu adalah tertakluk hanya kepada bidang kuasa penyeliaan mahkamah.

(2) Walaupun keputusan Pihak Berkuasa Negeri adalah muktamad, perayu mempunyai hak untuk merujuk kepada bidang kuasa penyeliaan H mahkamah bagi memeriksa keputusan Pihak Berkuasa Negeri sama ada terdapat ketaksahan undang-undang, ketidakwajaran prosedur atau keadaan tidak rasional. Tanpa mengira apa-apa kesalahan dalam asas keputusan Pendaftar Tanah Daerah, ganti rugi telah diputuskan oleh Pihak Berkuasa Negeri. Seksyen 16 Akta 1990 telah, secara asasnya I dipatuhi. Ia bukanlah kes perayu bahawa terdapat ketaksahan undang-undang atau ketidakwajaran prosedur. Dengan itu, satu-satunya asas bagi semakan kehakiman yang kekal adalah keadaan tidak rasional.

(3) Dalam bidang kuasa rayuan atau penyeliaan, ia harus pertama sekali dibuktikan bahawa terdapat kekhilafan yang membawa kesan kepada merit, dan dalam bidang kuasa penyeliaan ia harus dibuktikan bahawa ia bukan kekhilafan kecil, tetapi satu kekhilafan yang tidak mampu diperjelaskan sehingga boleh dikatakan tidak rasional. Hujahan perayu di sini adalah bahawa dalam satu pengambilan tanah di bawah Akta Pengambilan Tanah 1960 pada tahun 1997, ganti rugi yang diawardkan adalah RM5.12 kps, sedangkan award yang diberikan oleh Pihak Berkuasa Negeri pada tahun 2010, iaitu hal perkara permohonan semakan kehakiman ini, adalah RM1.16 kps. Walau bagaimanapun, award pada tahun 1998 adalah berkenaan pengambilan tanah, sedangkan award pada tahun 2010 adalah berkenaan ganti rugi yang diputuskan di bawah s. 16 berkaitan dengan notis di bawah s. 11(1). Perayu dalam kes ini tidak kehilangan tanah seperti dalam pengambilalihan, tetapi hanya hilang penggunaan tanah untuk pertanian. Perbandingan yang dibuat dengan award 1997 bukanlah berdasarkan sesuatu yang mempunyai titik persamaan. Perbezaan ini sahaja tidak boleh menjadi dasar apa-apa kesimpulan. Dalam kegagalannya membuktikan dasar titik persamaan, perayu telah gagal membuktikan bahawa kehilangan penggunaan tanah bagi tujuan pertanian berjumlah satu jumlah yang jauh lebih tinggi daripada RM1.16 kps di mana perbezaannya tidak boleh diperjelaskan. Dalam perkataan ss. 11 dan 16, tiada alasan untuk mengimport ke dalam Akta 1990 asas bagi penentuan ganti rugi dalam Akta Pengambilan Tanah 1960.

Case(s) referred to:

B A Rao & Ors v. Sapuran Kaur & Anor [1978] 1 LNS 151 FC ***(refd)***
Council of Civil Service Unions and Ors v. Minister for the Civil Service [1985] AC 374 ***(refd)***
Ismail Abdullah v. Tenaga Nasional Bhd [2011] 3 CLJ 770 CA ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***
See Kok Kol v. Chong Kui Seng & Ors & Another Appeal [2010] 2 CLJ 481 CA ***(refd)***
Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 72
Electricity Supply Act 1990, ss. 11(1), (2), (4), (7), 16(1), (2)
Federal Constitution, art. 13
Land Acquisition Act 1960, First Schedule, ss. 1, 2(c), (d), Third Schedule, s. 2(1), (3)
Rules of the High Court 1980, O. 53 r. 3(2)

Other source(s) referred to:

Guru Prasanna Singh, *Principles of Statutory Interpretation*, 11th edn, 2008, p. 133

A *For the appellant - Paari Perumal (K Jayaratnam with him); M/s Jayaratnam & Partners*
For the 1st & 2nd respondents - Ahmad Fuad Othman; Assistant State Legal Advisor, Selangor
For the 3rd respondent - Gurmel Singh; M/s Balvinder Singh Kenth

[Editor's note: For the High Court judgment, please see Salak Land Development v. Pentadbir Tanah Daerah Kuala Langat & Ors [2012] 1 LNS 174.]
B

Reported by Suhainah Wahiduddin

JUDGMENT

C **Abdul Wahab Patail JCA:**

[1] The applicant Salak Land Development Sdn Bhd ("the appellant") had applied for the remedies, *inter alia*, of *certiorari*, *mandamus*, declarations and injunctions under judicial review under O. 53 r. 3(2) of the Rules of the High Court 1980 in respect of the decision of the second respondent Pihak
D Berkuasa Negeri Selangor ("the second respondent") made on 14 July 2011, awarding the appellant compensation in the sum of RM2,931,937.50 and dismissing "tuntutan pampasan bagi tanah sterile, tanah terasing dan zon penampan" under an appeal by the appellant pursuant to s. 16(2) of the Electricity Supply Act 1990 ("the 1990 Act") against the decision of the first
E respondent Pentadbir Tanah Kuala Langat ("the first respondent") under s. 16(1).

Background

[2] The third respondent, Tenaga Nasional Bhd ("the third respondent") had issued a "notis kemasukan" (First Schedule Notice) dated 22 August
F 2008 under s. 11(2) of the 1990 Act to the appellant, the registered owner of a land held under Hakmilik HS (D) 5289, Lot No. PT 8959, Mukim Tanjung Dua Belas, Daerah Kuala Langat, Selangor Darul Ehsan, to acquire a three chain wide right of way over a part of the land to construct a 275kV Loop In Loop Out Transmission Line from Olak Lempit Hicom to Bukit
G Baja Main Intake Substation.

[3] Pursuant to s. 11(4) of the 1990 Act, the appellant by letter dated 15 September 2008, objected to the alignment proposed by TNB in the said First Schedule Notice dated 22 August 2008 and made a proposal for the realignment of the same by offering an alternative route over the said land.
H

[4] The first respondent conducted an inquiry under s. 11(7) of the 1990 Act on 4 December 2008, it made a Second Schedule order wherein the appellant's objection to the third respondent's alignment and the appellant's realignment proposal was dismissed.

I **[5]** The appellant appealed to the second respondent and by letters 6 May 2009 and 5 August 2009, the parties were informed that the second respondent had allowed the appellant's appeal and that the third respondent

was to realign its route in accordance to the route proposed by the appellant. Pursuant to an inquiry on 8 September 2010, under s. 16(1) of the 1990 Act, the first respondent ordered the third respondent to pay compensation in the sum of RM1,465,968.70. The appellant appealed to the second respondent against the first respondent's award. The second respondent varied the award by increasing it to RM2,931,937.50. The appellant's application for judicial review of the decision by the second respondent was dismissed by the High Court on 17 February 2012.

Submissions For The Appellant

[6] The appellant's complaint was directed at the assessment process employed by second respondent. It was submitted that it was flawed, failed to take into account relevant factors, and wholly unreasonable. It was submitted that the High Court erred in dismissing the appellant's application for judicial review in that it failed to appreciate that the second respondent failed to take into consideration relevant factors and misconstrued the applicable sections of the 1990 Act.

[7] Shorn of the redundant language, the point made was:

(a) Neither the first nor the second respondent chose to file any affidavit in reply and therefore all averments made in the affidavits filed by the appellant are deemed to be admitted by the first and second respondents;

(b) The appellant submitted a valuation report for the purpose of calculation of compensation payable under s. 16(2) of the 1990 Act, and there was no alternative valuation report produced by any of the respondents to challenge it;

(c) The second respondent only considered the directly affected land but failed to take into account the other portion of lands to be affected and which cannot be used by the appellant, and there is no evidence the matters to be considered in determining compensation as provided under s. 2, particularly s. 2(c) and (d) of the First Schedule to the Land Acquisition Act 1960 ("the 1960 Act") was considered.

[8] The reference by the appellant to Land Acquisition 1960 Act arose from *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624 CA where the Court of Appeal addressed s. 11 of the 1960 Act. The submission proceeded to art. 13 of the Federal Constitution, the book *Principles of Statutory Interpretation* by Guru Prasanna Singh, 11th Edition, 2008 at p. 133, and came back to that:

(a) The " ... construction to be placed on the word "compensation" in s. 16 of the 1990 Act is consistent with the words "full compensation" in s. 11 of the 1990 Act; and

A (b) The full compensation is to be paid for the actual loss of the lands caused by reason of disturbance, damage or disability as outlined in the valuation report submitted by the appellant.

[9] The submission went back to:

B (a) *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* (*supra*) that the Court of Appeal had determined that lands intended to be used under s. 11 of the 1990 Act is to be treated as a compulsory acquisition, and that being the case, the 1960 Act and cases decided thereunder for compensation would be relevant;

C (b) That the appellant has made out a *prima facie* case of inadequate award because the only evidence is the appellant's valuation report contrary to the requirement in s. 2(l) and (3) of the Third Schedule of the 1960 Act;

(c) The determination of the market value of the affected land is outlined in s. 1 to the First Schedule to 1960 Act, that the valuer may use any D suitable method of valuation to arrive at the market value, that the comparison method is one such accepted method of valuation and has been used in the appellant's valuation report; and that in an earlier acquisition of 15.473 hectares of the same land in 1997 by gazette notification No. 371 dated 24 April 1997 the award was RM5.12 per E sq. foot.

[10] The submission for the appellant also addressed the question raised by the third respondent whether the compensation awarded can be questioned by way of a judicial review application. It was submitted:

F (a) In the light of the Federal Court decisions in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 and *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629; [2010] 6 MLJ 1, judicial review now allows for review not only of the decision making process but the decision also;

G (b) The High Court misunderstood *Ismail Abdullah v. Tenaga Nasional Bhd* [2011] 3 CLJ 770 CA in concluding that the decision of the second respondent pursuant to s. 16(2) of the 1990 Act is final.

[11] The second respondent had raised the argument that public policy demanded that the deliberations of the second respondent in respect of H s. 16(2) is barred by the need for secrecy. It was submitted, relying on *B A Rao & Ors v. Sapuran Kaur & Anor* [1978] 1 LNS 151; [1978] 2 MLJ 146; *See Kok Kol v. Chong Kui Seng & Ors & Another Appeal* [2010] 2 CLJ 481 that the High Court erred to have said that public policy demands that the decision of the second respondent not be reviewed on account of it being secret I without any evidence being presented. The appellant sought to distinguish *Ismail Abdullah v. Tenaga Nasional Bhd* (*supra*) on the ground that the Court of Appeal did not have the benefit of the decision of the Federal Court in *B A Rao*.

Reasoning And Decision

[12] The appeal before this court was in respect of the dismissal by the High Court of an application for judicial review.

[13] It must never be overlooked that judicial review is about the exercise of a supervisory jurisdiction of the court as distinct from its appellate jurisdiction. Appellate jurisdiction concerns appeals from the courts in whom is placed judicial authority. Appellate jurisdiction may also extend to the decisions of an authority, body or person if the legislation provides that an appeal therefrom lies to the court. But where a power or discretion is assigned to such authority, body or person, and there is no provision that an appeal therefrom lies to the court, it means that the legislature did not intend that an appeal may lie to the courts, and that the exercise of the power or discretion given to that authority, body or person is subject only to the supervisory jurisdiction of the court.

[14] The *locus classicus* on when the supervisory jurisdiction of judicial review is exercised is *Council of Civil Service Unions and Ors v. Minister for the Civil Service* [1985] AC 374 HL. In that case, Lord Diplock reviewed the common law on judicial review and categorised the instances warranting judicial review as illegality, procedural impropriety and irrationality, with a possible fourth ground as proportionality. The first, illegality, is obvious. The second, procedural impropriety, was the category of cases from which arose the notion that in judicial review the court examines the decision making process and not the decision itself. The third ground, irrationality, established that the notion is not entirely correct. It, however, warrants precise explanation. It does not, of course, refer to the rationality or the absence of it on the part of the decision maker. Although it examines the decision itself, it has nothing to do with the question whether the decision maker, as in an appellate jurisdiction, had erred, and per s. 72 of the Courts of Judicature Act 1964, that error affected the merits of the decision. In the supervisory jurisdiction the court must determine if the authority, body or person given the power or discretion had so erred that the decision cannot be explained and therefore can only be described as irrational. That approach as to the supervisory jurisdiction respects the law passed by the legislature to give the power or discretion to make the decision to the authority, body or person, while reserving the power to ensure that the power or discretion is exercised by that authority, body or person as intended by the legislature and is not abused.

[15] "Proportionality" is a concept not born of the common law but the continental European, and sometimes termed the occidental, system. It is arguably superfluous as there is already "irrationality" for decisions so out of proportion that it can only be described as irrational. The danger is that if treated as a separate category, "proportionality" could erode the boundary

A of the supervisory jurisdiction and lead to inadvertent interference with powers and discretion specifically assigned by the legislature to a specific authority, body or person.

[16] Be that as it may, the decisions of the Federal Court in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 and *Ranjit* B *Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629; [2010] 6 MLJ 1 reflect the considered enunciation of the law in the supervisory jurisdiction.

[17] In this appeal before this court, the District Land Administrator's C order under s. 11(7) dated 4 December 2008 shows:

> TNB setuju membayar pampasan dengan nilaian pasaran semasa dan ikut syarat nyata tanah [illegible] iaitu pertanian.

[18] There was no appeal to the State Authority within 21 days against that decision. The determination dated 24 August 2010 in the Form in the Third D Schedule by the District Land Administrator under s. 16(1) stated as to compensation:

> Hilang Upaya Tanah RM1,465,968.70.

[19] The decision of the State Authority in the appeal to it, was conveyed E by the letter dated 14 July 2011 by the Ketua Penolong Pegawai Daerah (Tanah) on behalf of the Pegawai Daerah Kuala Langat. The State Authority increased the compensation to RM2,931,937.50 and dismissed the claim for compensation for "tanah sterile, tanah terasing dan zon penampan".

[20] Compensation under the 1990 Act is provided under s. 16 as follows:

F

> 16.(1) The amount of compensation, if any, payable under section 11 or 13 shall be assessed by the District Land Administrator after such enquiry as he shall deem sufficient. The assessment shall be substantially in the form set out in the Third Schedule:
>
> Provided further that no compensation shall be payable by the licensee in G respect of any tree within fifty feet of the centre line of any road constructed or maintained by the State Government or by any local authority unless it is proved that the tree was in existence prior to the construction of the road.
>
> (2) Any person aggrieved with the District Land Administrator's H assessment may within twenty-one days after the assessment appeal to the State Authority whose decision shall be final.

[21] Although the decision of the State Authority is final, the appellant has a right to resort to the supervisory jurisdiction of the court to examine the decision of the State Authority as to whether there is illegality, procedural I impropriety or irrationality.

[22] We observed that regardless of any error in the basis of the decision of the District Land Registrar, the compensation has been decided upon by the State Authority. Section 16 of the 1990 Act had, on the face of it, been complied with. Indeed, it was not the appellant's case there was illegality or procedural impropriety. That being so, the only foundation for judicial review that remained was irrationality.

[23] The appellant's submission was that in a land acquisition under the Land Acquisition Act 1960 in 1997, the compensation awarded was RM5.12 psf, whereas the award by the State Authority in 2010, the subject of the application for judicial review, is RM1.16 psf. It does appear, on the face of it, that there could be something wrong in that decision. But be it in the appellate or the supervisory jurisdiction, it must first be demonstrated there was an error affecting the merits, and in the supervisory jurisdiction it must be demonstrated that it was no mere error, but the error is so incapable of explanation that it can only be termed irrational.

[24] We observed that the award in 1997 was in respect of a land acquisition, whereas the 2010 award was in respect of compensation determined under s. 16 in respect of a notice under s. 11(1). The appellant in this case did not lose the land as in an acquisition, but only as to the use of the land for agriculture. The comparison with the 1997 award was not apple to apple. The difference alone cannot be the basis of any conclusion. In failing to demonstrate on an apple to apple basis, the appellant failed to demonstrate that the loss of use for agricultural purpose amounted to amount so much higher than the RM1.16 psf such that that difference cannot be explained.

[25] In *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713 FC, it was held by the Federal Court that the primary duty of the court is to give effect to the intention of the legislature in the words used by it. It is a well-established canon of interpretation that the intent of the legislature in the words used by it in their natural and ordinary sense. We find in the words of ss. 11 and 16 no reason to import into the 1990 Act the basis of determination of compensation in the Land Acquisition Act 1960.

[26] The foregoing reasons necessarily led this court to dismiss the appeal with costs, which was agreed to be at RM5,000 to the first and the second respondents, and similarly to the third respondent. We order the deposit to account of costs.